Supreme Court, U.S.
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No. 05-63

In the Supreme Court of the United States

STEPHANIE S. ACTON,

Petitioner,

v.

CITY OF EATON, ET AL.,

Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit

RESPONDENTS' BRIEF IN OPPOSITION

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QUESTION PRESENTED

The gist of Ms. Acton's question(s) presented to the Court focus on her claims of due process violation. She argues that her constitutional rights were violated by the trial court dismissing her claims on motion of respondents, specifically including respondents City of Eaton, Renner, Daily, Romeo, Petry and Taylor, before she completed discovery. Acton also argues that her involuntary commitment for psychiatric evaluation and/or treatment violated due process for a number of reasons and that respondents should not be entitled to immunity.

Ms. Acton's current arguments do not present any viable question worthy of this Court's time or determination. First, as to these respondents, the City of Eaton, Renner, Daily, Romeo, Petry and Taylor, Acton's claims were dismissed as barred by the applicable statute of limitations. This decision follows established Supreme Court law. Nothing in this case presents a new or unique issue to take it outside that law and no conflict among the circuits is presented.

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STATEMENT OF THE CASE

I. Clarification of the record

Ms. Acton's claims against these respondents were dismissed on statute of limitations grounds. The "facts" presented by Ms. Acton in her petition therefore bear no relation to this fact, and are only unsupported speculation.

As relates to these respondents, the City of Eaton, Renner, Daily, Romeo, Petry and Taylor, the allegations presented in Acton's *pro se* complaint show that the last act alleged to have been done by any of them occurred March 13, 2001. Ms. Acton was involuntarily committed pursuant to a valid court order signed by Judge Dues of the Preble County Probate Court and based upon affidavits, including that of a doctor, as required by Ohio statute. Ms. Acton's complaint was not filed until April 4, 2003.

Additionally, the "facts" alleged in Acton's complaint also indicate that any and/or all the Eaton respondents were acting in their official, as opposed to individual, capacities with regard to any conduct described.

REASONS FOR DENYING WRIT OF CERTIORARI

I. The Court's decision below is consistent with Supreme Court decisions.

A. The applicable statute of limitations expired before Acton filed her complaint.

The District Court properly dismissed the City of Eaton, Renner, Daily, Romeo, Petry and Taylor and the Sixth Circuit properly affirmed that dismissal because Acton's claims are

barred by the applicable statute of limitations. The United States Supreme Court in *Wilson v. Garcia* (1985), 471 U.S. 261 held that claims under 42 USC §1983 are to be characterized as "personal injury" actions for purposes of determining the appropriate statute of limitations. Specifically, each state's limitations period for personal injury is to be applied to such claims which in this case is Ohio Revised Code §2305.10. *Wilson, supra*; *Owens v. Okure* (1998), 488 U.S. 235, 249-250. The Ohio statute of limitations for personal injury is two years. Ohio Revised Code §2305.10.

The last conduct attributed by Acton to any of these respondents in her complaint occurred March 13, 2001. This is the absolute latest, then, her claim against these respondents could have accrued. That being so, Acton's complaint filed April 4, 2003 is untimely because it was not filed within two years of March 13, 2001. Since the complaint was filed untimely Acton's claims are barred and her complaint was properly dismissed pursuant to Rule 12(b)(1) and/or 12(b)(6) of the Federal Rules of Civil Procedure because no jurisdiction exists and no claim may proceed.

The basis for this underlying dismissal is consistent with and mandated by valid, current law as pronounced by this Court. At no level of this suit has Acton argued or produced any law or evidence to take the matter outside that precedent. As a consequence, that precedent and the Federal Rules were properly followed.

Neither has Acton demonstrated any conflict among the circuits on this issue. The law is well-established that the applicable limitations period for due process claims is that for bodily injury under state law. That period was applied here. No reason exists for this Court to grant certiorari.

B. The individually identified City of Eaton employees acting in their official capacities are not real parties in interest.

Although this argument was not reached below due to dismissal of all claims against these respondents, the City of Eaton employees, Renner, Daily, Romeo, Petry and Taylor, identified by Acton individually would be entitled to dismissal in any event. The individual employees are identified and alleged in the complaint to be acting in their "official capacities" only. Suits against government officials acting in their official capacities are equivalent to suits against the governmental entity itself and the individual employees are not proper defendants. *Kentucky v. Graham*, 473 U.S. 159, 165-166 (1985); *Brandon v. Holt*, 469 U.S. 464, 471-472 (1985). Consequently, the City itself, only, not the individual City employees identified would be the real party in interest as relevant to Acton's allegations. All the individually identified City employee defendants, Renner, Daily, Romeo, Petry and Taylor, were properly granted dismissal pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure.

This, like the statute of limitations issues, is well-established law of this Court. No novel questions or circumstances are presented here and no conflict among the circuits is presented requiring this Court to review this issue.

C. No act of the City of Eaton was taken pursuant to an unconstitutional municipal policy or custom.

Finally, this Court expressly held in *Monell v. Department of Social Services*, 436 U.S. 658 (1978), that a municipality cannot be held liable under 42 USC §1983 simply because it employs a purported tortfeasor. In other words, a local

government cannot be held liable under §1983 on a respondeat superior theory. *Monell, supra* at syllabus Paragraph 3 and at Pages 691-695.

Acton failed to allege any acts by the City of Eaton taken pursuant to unconstitutional policy or custom and instead appears to allege only tort type conduct, if any, taken by the identified City employees. Acton is attempting to assert claims under a respondeat superior theory. This Court has held such claims are not viable. Any claims against the City of Eaton itself also fail and were properly dismissed pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure.

II. Conclusion

Acton has presented no basis for this Court's allowances of the Writ of Certiorari. The courts below decided the issues before them properly and in accordance with the decisions of this Court. This matter is not one appropriate to expend this Court's valuable time. The Writ of Certiorari should be denied.

Respectfully submitted,

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